Supreme Court, U.S.
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No. 00-

IN THE

Supreme Court of the United States

GARY R. LEBLANC,

Petitioner,

v.

RICHARD P. SALEM,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT.

PETITION FOR A WRIT OF CERTIORARI.

GARY R. LEBLANC
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Pro Se Petitioner

Dated: September 5, 2000

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

3900

QUESTION PRESENTED

I. Whether U.S. Bankruptcy Court's, Queenan, J., allowance of Trustee's Motion to Abandon Right of Revocation of Contingent Settlement was an abuse of discretion, when creditor raised issue of fraud in the settlement and trustee conducted no investigation into creditor's allegations and presented no evidence of a fair and reasonable settlement, and the Court placed burden of proving fraud on creditor, in direct conflict with other federal jurisdictions.

PARTIES

The parties to the proceedings below were the petitioner, Gary R. LeBlanc, acting pro se, and the respondent Richard P. Salem, acting pro se.

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PETITION FOR WRIT OF CERTIORARI

The petitioner, Gary R. LeBlanc, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit, entered in the above-entitled proceeding on June 5, 2000.

OPINIONS BELOW

The opinion of the Court of the Appeals for the First Circuit is published at _____ and reprinted in the Appendix hereto ("App. A") at page App. 1a. By order entered June 5, 2000, The First Circuit denied LeBlanc's petition for rehearing. A copy of the order denying rehearing is reprinted in the Appendix at page App. 14a. The Memorandum decision of the United States District Court for the District of Massachusetts, dismissing the appeal is reprinted in the Appendix hereto at page App. 16a.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. § 1334, and 28 U.S.C. § 158(d), the petitioner brought this suit in the United States District Court for the District of Massachusetts. On June 25, 1999, after remand, the United States District Court entered judgment granting summary judgment to the Respondent.

On May 16, 2000, the United States Court of Appeals for the First Circuit affirmed the decision of the United States District Court entering judgment in favor of the respondent.

On June 5, 2000, the United States Court of Appeals for the First Circuit denied Petitioner's Petition for Panel Rehearing.

STATEMENT OF CASE

In October 1990, the Petitioner, Attorney Gary R. LeBlanc won a judgment in the Supreme Judicial Court of Massachusetts against Alfred Lizotte in excess of $450,000.00, on behalf of his client, Mailman Steam Carpet Cleaning, Corp. The judgment was secured by a real estate attachment on a parcel of land and buildings owned by Lizotte and upon which he controlled a small corporation entitled Al's Service Station, Inc. Said corporation was severely in debt to creditors. All of the debt was accumulated after the judgment secured by LeBlanc in 1990.

An appeal ensued and in 1993, the judgment was affirmed by the Supreme Judicial Court of Massachusetts. Pending the appeal, LeBlanc's client, Mailman, slid into bankruptcy and the Lizotte judgment became the principle asset of the bankruptcy estate.

On September 18, 1995, the trustee appointed in Bankruptcy notified the Court and creditors of his intention to compromise the Lizotte judgment, now in excess of $500,000.00, down to $100,000.00. LeBlanc, as a creditor, objected.

On October 19, 1995, the Bankruptcy Court conducted a hearing on the proposed settlement in which the trustee introduced an appraisal, which valued the business and real estate to have a total

fair market value of $350,000.00. LeBlanc argued the appraisal included assets of the corporation that were partially and or fully leveraged, yet, the trustee assigned a $75,000.00 value to them. Also, the sale of the business was added to the appraisal and was valued at $75,000.00. Subsequently, the corporation, which was severely in debt, went bankrupt and was sold, therefore, excluding these alleged assets. All that remained, as assets of the corporation, was "garage machinery" with an appraised auction value of only $22,000.00. The real estate had an assigned value of $175,000.00.

LeBlanc asserted the property and buildings and pumps thereon had a fair market value far in excess of $500,000.00. However, LeBlanc was unable to present a written appraisal as Lizotte refused to allow LeBlanc's appraiser on the property.

At the conclusion of the hearing, the Court ordered the approved compromised settlement, subject to the following condition:

> If the gas station is sold within two years the trustee may move for revocation of this approval. Depending on the facts of the sale the Court will then either confirm or revoke its approval.

Approximately seven months later, Lizotte sold the real estate and alleged business assets for $560,000.00. Lizotte maintained the increase of over $350,000.00, above the value of the real estate

was all business assets, but provided no disclosure of these alleged assets.

LeBlanc immediately alleged the sale of unidentified business assets was a sham and that Lizotte was fraudulently diverting these assets from Lizotte's creditors, specifically the contingent settlement.

LeBlanc demanded trustee provide a complete accounting of the assets of the sale and full disclosure to rule out fraud. When the trustee refused to investigate LeBlanc's allegations, LeBlanc moved to compel the trustee to seek revocation of the contingent settlement. Said motion was continued generally and the Court approved very limited discovery by LeBlanc. LeBlanc's request to conduct a Rule 2004 examination of the buyer, Peterborough Oil, was denied over LeBlanc's objection.

The Court severely limited LeBlanc's discovery of the alleged fraud to Alfred Lizotte and Gulf Oil, a creditor of Lizotte. The 2004 examinations were further limited to the terms of the sale. Lizotte postponed the discovery for alleged medical reasons, then upon examination, claimed amnesia and could not recall any assets allegedly sold to the buyer, Peterborough Oil.

No examination was ever conducted of Gulf Oil, as they were not a party to the sale and could add no information regarding the "terms of the sale".

Therefore, without an accounting of the assets allegedly sold, by Lizotte, LeBlanc turned to the trustee to perform his duty to investigate the sale. The trustee refused to investigate the sale and instead moved the Court to abandon his right to seek revo-

cation of the settlement. LeBlanc objected to the abandonment.

On April 15, 1998, the Court held a hearing on the abandonment in which LeBlanc presented the results of his severely restricted discovery as follows:

(1) The Purchase and Sales Agreement explicitly stated that the buyer, Peterborough Oil, was purchasing the "real estate only".

(2) The Purchase and Sales Agreement also stated "all other assets remain with seller".

(3) The Purchase and Sales Agreement listed a sales price for the real estate of $200,000.00, which was in line with the trustee appraisal of $175,000.00. Yet, the actual deed listed the sales price of the real estate at $300,000.00.

(4) Both Lizotte and his attorney failed and/or refused to inform the Court or the trustee of the $100,000.00 gain in the sale of the real estate, either prior to or, subsequent to the sale, despite the language of the prior contingent settlement order.

(5) Lizotte applied the additional $100,000.00 of real estate funds, not to the settlement, but to the debts of the corporation, which debts were acquired over three years subsequent to the real estate attachment and judgment.

(6) Lizotte claimed the Purchase and Sales Agreement required him to pay his corporate debt with the proceeds of the sale including the sale of the real estate, despite the clearly superior judgment and attachment.

(7) The Purchase and Sales Agreement required Lizotte to pay the corporate debt from the sale proceeds, yet, the corporation was never sold to the buyer, Peterborough Oil. Therefore, the buyer had no legitimate interest in the debts of the corporation, as none of the debts were appurtenant to the land and the corporation remained with the seller, Lizotte.

(8) In the Purchase and Sales Agreement, Lizotte was allegedly selling over $350,000.00 worth of business/corporate assets to the buyer, Peterborough Oil. Yet, neither one single asset is

listed in the Purchase and Sales Agreement, nor have these alleged assets ever been accounted for, or even described in any document.

(9) Upon examination of the seller, Lizotte, by LeBlanc, Lizotte could not recall one single asset sold to Peterborough Oil. Lizotte alleged that he was on oxygen, which caused complete amnesia as to the facts of the sale.

(10) LeBlanc moved the Court to allow an examination of the buyer, Peterborough Oil, as to the assets allegedly sold by Lizotte. Said motion was denied over LeBlanc's objection.

(11) Subsequent to the sale, Lizotte reopened his business, with his business assets, less than three miles from his original location.

(12) Subsequent to the sale, Peterborough Oil completely remodeled the real estate with none of Lizotte's corporate assets, but rather their own "Mr. Mikes" franchise.

(13) Over a year prior to the sale, Peterborough Oil orally represented to LeBlanc's private investigator that the real estate

alone had a value of between $500,000.00 to $700,000.00 (without any of Lizotte's corporate assets. The final purchase price was $560,000.00

(14) Subsequent to the sale, Peterborough Oil represented orally to LeBlanc that the contract for the sale was set up by Lizotte and his attorney, because "That's the way they wanted it. We don't care, so long as we got the land".

(15) According to the Purchase and Sales Agreement, sixty thousand dollars of the sales proceeds were paid directly to Alfred Lizotte, personally, and were therefore subject to the contingent settlement. Yet, trustee never tried to recoup even these assets for the estate.

These are just some of the arguments raised by LeBlanc at the April 15, 1998 hearing. Despite this overwhelming evidence, the Court approved the abandonment and LeBlanc appealed the ruling; first to the United States District Court and then to the First Circuit Court of Appeals, who both upheld the ruling from the First Circuit's denial of LeBlanc's Petition for rehearing. He now applies for Writ of Certiorari.

ARGUMENT

In the case at hand, the First Circuit held, in part, quoting *Kowal* v. *Malkemus (In re Thompson)*, 965 F.2d 1136, 1145 (1st Cir. 1992), "that a Chapter 7 Trustee is required to reach an informed judgment, after diligent investigation, as to whether it would be prudent to eliminate the inherent risks, delays and expenses of prolonged litigation in an uncertain cause. Balancing the trustee's obligation to obtain...the maximum return for the creditors(on whose behalf he toils)." *Id.* at page 6, line 4. The court goes on to state "LeBlanc mounts a claim of fraud — a claim that, after earnest investigation, he cannot substantiate. In order to probe the claim more thoroughly, the trustee would have to deplete the estate's (already slim) assets in exploring what might well prove to be a dry hole..." (*Id.* at page 6, lines 15-20).

These statements could not be further from the truth. They are totally erroneous factual findings and a misapplication of a properly stated rule of law.

To the contrary, LeBlanc presented overwhelming indicia of fraud. Although LeBlanc is an attorney, in this case he was acting solely as a creditor, raising an issue of Lizotte's fraudulent real estate transaction.

The Court erroneously puts the burden on LeBlanc, a creditor, to investigate and substantiate the fraud. Clearly this duty lies with the trustee who did absolutely nothing to investigate LeBlanc's allegations. Therefore, how could he possibly have

reached an "informed judgment after diligent investigation.

On page 7 of the First Circuit's opinion, the Court states in relevant part, "Nor was Salem's (trustee) position rubber stamped. The Bankruptcy Court conducted no fewer than four hearings to scrutinize the Appellant's claims..." This is also a gross misstatement of the facts. Although the Court conducted hearings, not once did the Bankruptcy Court, or any other Court order the trustee to investigate LeBlanc's allegations of fraud. Not once did any of these Court's question what assets were allegedly sold to Peterborough Oil. Not once did the Court order full and complete disclosure. The First Circuit quotes Judge Harrington of the United States District Court that appellant had, "neither introduced any contrary expert testimony nor proffered any hard evidence, that Lizotte manipulated the valuation of the real estate (page 8).

To the contrary, Lizotte's own expert appraisal of the real estate valued the property at -$20,000.00. the Purchase and Sales Agreement stated $200,000.00 and the actual deed and secret sale was for $300,000.00.

The circumstantial evidence of fraud presented by LeBlanc is so overwhelming, it is a slap in the face of justice to determine the trustee need not investigate further.

The First Circuit's ruling is in direct conflict with other jurisdictions, such as *In re Chicago Art Glass, Inc.*, 155 B.R. 180 (Bkrtcy N.D.Ill. 1993), which held that although a trustee does not "have an obligation to investigate every matter brought to his/her attention, the trustee is statutorily required to look

into [allegations] of the concealment of assets, fraudulent conduct, or any other wrong doing, by the debtors or other third parties. *Id.* at 188. See also *In re Melenyzer*, 140 B.R. 143, 155 (Bkrtcy.W.d.Tex.1992).

Further, in the case of *In re Morse Tool, Inc.*, 148 B.R. 97 (Bkrtcy.D.Mass.1992), citing the Uniform Fraudulent Conveyance Act, 11 U.S.C. § 548, and its counterpart, the Massachusetts Uniform Fraudulent Conveyance Act, Massachusetts General Laws, Chapter 109A, Section 13, there must be at least a reasonable equivalence, between the purchase price and the value of the property received, for there to be fair consideration for the transfer of assets. Therefore, the "...focus is on ascertaining whether the price paid was fair and reasonable or, on the other hand, was so high as to have been, a gift or give away; it also asks whether in fairness and good faith to creditors, consideration paid can be deemed reasonable". *Supra.* See also *In re Worcester Quality Foods*, 152 B.R. 494 (Bkrtcy. D.Mass.1993).

CONCLUSION

In failing to present any accounting of the assets sold of the sale, the trustee breached his statutory duty, as herein stated, to investigate the concealment of assets, fraudulent conduct or any other wrongdoing by Lizotte. To blindly recommend abandonment was wanton negligence by the Trustee. For the Court to accept his uninformed opinion without any investigation, in violation of its own

contingent settlement, is not diligent investigation and is clearly an abuse of discretion. How little effort would have been required to shake a potentially fruitful bush.

Instead, the Court accepted the trustee's recommendation in a vacuum, with no facts to support its conclusion. The Court erroneously put the burden on creditor LeBlanc to produce concrete evidence of fraud beyond a reasonable doubt, rather than compel the trustee to investigate and produce an accounting to determine if the sale was "fair and reasonable".

For the compelling reasons set forth above, the Petition for Writ of Certiorari should be allowed.

WHEREFORE, based upon the foregoing, the Petitioner, Gary R. LeBlanc, respectfully moves this Honorable Court to allow his Writ of Certiorari and reverse the decision of the U.S. Court of Appeals for the First Circuit and rule accordingly.

Respectfully submitted,
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APPENDIX A

United States Court of Appeals
For the First Circuit

No. 99-1865

IN RE MAILMAN STEAM CARPET
CLEANING CORP.,
Debtor.

GARY R. LEBLANC,

Appellant,

v.

RICHARD P. SALEM, TRUSTEE, ETC.,

Appellee.

APPEAL FROM THE
UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Edward F. Harrington,
U.S. District Judge]

Before

Selya, Circuit Judge,

Bownes, Senior Circuit Judge,

and Boudin, Circuit Judge.

Gary R. LeBlanc, pro se ipso, for appellant.

Richard P. Salem, pro se ipso, for appellee.

May 16, 2000

SELYA, Circuit Judge. This appeal requires us to revisit the final resting place of Mailman Steam Carpet Cleaning Corp. (the debtor). An earlier opinion of this court adumbrates the relevant background, see LeBlanc v. Salem (In re Mailman Steam Carpet Cleaning Corp.), 196 F.3d 1, 2-4 (1st Cir. 1999) (Mailman I), and an abbreviated version, borrowing heavily from the original, suffices here.[1]

In October 1990, the debtor, represented by Attorney Gary R. LeBlanc, won a verdict in excess of $450,000 against Alfred C. Lizotte in an environmental suit. An appeal ensued. Betimes, the debtor attached a parcel of commercial real estate (upon which Al's Service Station, a corporation controlled

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[1] We previously warned that the record in this case "lacks crucial documents" and requires us to use approximate numbers throughout. Mailman I, 196 F.3d at 2. That warning still applies.

by Lizotte, operated a Gulf station) in an effort to secure the judgment.

Before collecting any sums from Lizotte, the debtor slid into bankruptcy. See 11 U.S.C. §§ 701-766 (1994 & Supp. 1999). The Lizotte judgment thus became a principal asset of the bankruptcy estate and LeBlanc, who had been engaged under a contingent fee arrangement, became a creditor. On September 18, 1995, the trustee in bankruptcy, Richard P. Salem, notified the court and creditors of his intention to compromise the judgment for $100,000. LeBlanc, qua creditor, objected.

The bankruptcy court held a hearing during which Salem introduced an appraisal that estimated the fair market value of the property, including the fixtures and equipment associated with Al's Service Station (the Corporation), at $390,000, and then assigned $175,000 of this total to the "[l]and, buildings and installations" owned personally by Lizotte (and, thus, subject to the attachment). The appraiser also pointed out that the real estate was encumbered by a prior first mortgage that secured nearly $100,000 in debt. LeBlanc asserted that the real estate was worth much more than the estimate but offered no concrete evidentiary support for a different valuation. No other creditor objected to the anticipated settlement.

In the end, the bankruptcy court approved the proposal, subject to the following condition:

> If the gas station is sold within two years from [October 19, 1995], the

> trustee may move for revocation of this approval. Depending on the facts of the sale, the court will then either confirm or revoke its approval.

The court denied LeBlanc's subsequent motion to alter or amend and ordered Salem to deliver an executed discharge of the lien, to be held in escrow pending payment of $100,000 to the bankruptcy estate.

Approximately seven months later, Lizotte and the Corporation sold the real property and the business assets of the Corporation for an aggregate price of $560,000. Lizotte maintained that the business assets represented most of the value; thus, he proposed to satisfy the first mortgage, remit $100,000 to Salem to complete the settlement, and pay the remaining net proceeds to the Corporation's creditors (the largest of which apparently was Gulf Oil or its distributor, New England Petroleum). Contending that this allocation was a sham and would fraudulently divert $360,000 from Lizotte's creditors (including the debtor), LeBlanc moved to compel Salem to seek revocation of the order conditionally approving the settlement. The bankruptcy court granted LeBlanc permission under Fed. R. Bankr. P. 2004 to examine Lizotte, Gulf, and the Corporation, limited, however, to information concerning the terms of the sale and to whom the proceeds had gone.[2]

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[2] The court subsequently denied LeBlanc permission to examine the buyer, Peterborough Oil Co. LeBlanc gripes about

The permitted discovery moved at a snail's pace. Finally, the depositions concluded and Salem sought leave to abandon the reserved right to seek revocation of the settlement. LeBlanc -- and LeBlanc alone -- opposed abandonment. At a hearing held on April 15, 1998, LeBlanc recounted his version of the pertinent facts and the conclusions that he had drawn from his investigation. See Mailman I, 196 F.3d at 3-4 (describing LeBlanc's contentions). Apparently unimpressed, the bankruptcy court overruled his objection and authorized Salem to surrender the right to seek revocation.

LeBlanc appealed both this order and a collateral order dealing with the allowance of his claim.[3] After some skirmishing -- including a remand for further findings -- the district court upheld both determinations. See In re Mailman Steam Carpet Cleaning, Civ. No. 99-40083-EFH (D. Mass. June 25, 1999) (Mailman II). LeBlanc then prosecuted this appeal. In it, he presses two assignments of error.

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this ruling in passing, but has neither assigned error to it nor made any suitably developed argumentation in regard to it.

[3] Striking on a different front, LeBlanc simultaneously filed an adversary proceeding against Salem, in which he alleged negligence and breach of fiduciary duty stemming from Salem's failure to seek revocation of the settlement. The bankruptcy court rejected this initiative, granting summary judgment in Salem's favor. The district court affirmed, and so did we. See Mailman I, 196 F.3d at 4-9.

The Abandonment Order

The appellant first solicits our intervention in respect to the order approving abandonment of the right to seek revocation of the settlement. As the appellant acknowledges, the standard of review is abuse of discretion. See Prebor v. Collins (In re I Don't Trust), 143 F.3d 1, 3 (1st Cir. 1998). The abuse of discretion rubric is not hard and fast. See 1 Steven Alan Childress & Martha S. Davis, Federal Standards of Review § 4.21, at 4-131 to -139 (3d ed. 1999). Here, we apply it against the background understanding that "[c]ompromises are favored in bankruptcy." Hicks, Muse & Co. v. Brandt (In re Healthco Int'l, Inc.), 136 F.3d 45, 50 n.5 (1st Cir. 1998) (quoting 9 Collier on Bankruptcy ¶ 9019.01, at 9019-2 (15th ed. 1995)).

A chapter 7 trustee is entrusted to marshal an estate's assets and liabilities, and proceed in settling its accounts on whatever grounds he, in his informed discretion, believes will net the maximum return for the creditors (on whose behalf he toils). When augmentation of an asset involves protracted investigation or potentially costly litigation, with no guarantee as to the outcome, the trustee must tread cautiously -- and an inquiring court must accord him wide latitude should he conclude that the game is not worth the candle. See, e.g., id. at 50-52. After all, "a chapter 7 trustee is required to reach an informed judgment, after diligent investigation, as to whether it would be prudent to eliminate the inherent risks, delays and expense of prolonged litigation in an uncertain cause." Kowal v. Malkemus

(In re Thompson), 965 F.2d 1136, 1145 (1st Cir. 1992).

These principles are dispositive here. LeBlanc mounts a claim of fraud -- a claim that, after earnest investigation, he cannot substantiate. In order to probe the claim more thoroughly, the trustee would have to deplete the estate's (already slim) assets in exploring what might well prove to be a dry hole. Given the known facts, a decision to go no further seems easily defensible.

Lizotte is now in bankruptcy, with no visible assets apart from the real estate which is at issue in this proceeding. The sale to Peterborough Oil reportedly was contingent on the payment of roughly $200,000 to Gulf Oil/New England Petroleum, and a further payment of $60,000 for a covenant not to compete. The mortgage -- a priority lien -- had a balance of nearly $100,000. Backing these sums out of the sales price left only $200,000 on the table -- some of which obviously would have to be devoted to closing costs, taxes, attorneys' fees, and the like. Under those circumstances, accepting a $100,000 settlement rather than either frustrating the sale (by attempting to block the $200,000 payment) or prolonging the squabble about how to allocate the sales price between real property and business assets does not appear unreasonable. Trustees must take care not to throw good money after bad, and, on this somewhat opaque record, Salem's inclination to embrace the settlement is a choice which appears deserving of some deference.

Nor was Salem's position rubber-stamped. The bankruptcy court conducted no fewer than four hearings to scrutinize the appellant's claims. Upon considering all the available evidence, the court elected, as its discretion fully allowed, to accept the trustee's recommendation. The situation thus is reminiscent of In re Thompson, in which we wrote:

> [T]he baseline for appellants' opposition to the proposed settlement rests in their readiness to second-guess the informed judgment of the chapter 7 trustee, as well as the discretionary determination of the bankruptcy court, that continued litigation would not result in a net benefit to the chapter 7 estate. . . . The important policy favoring efficient bankruptcy administration normally will warrant judicial recognition that the chapter 7 trustee, . . . rather than . . . an individual creditor, is the more appropriate arbiter of the "best interests" of the chapter 7 estate.

965 F.2d at 1145 (citations omitted).

The district court also reviewed the facts. In an abundance of caution, it remanded for further findings and ultimately affirmed the decision of the bankruptcy court. See Mailman II, slip op. at 3. The court stated that "the record simply does not reflect that the land owned by Lizotte and secured by the real estate attachment was valued at more than the $200,000 [originally] estimated by the independent real estate appraiser." Id. It then noted that the ap-

pellant had neither introduced any contrary expert testimony nor proffered any hard evidence "that Lizotte [had] manipulated the valuation of his real estate." Id. Consequently, the district court concluded that the bankruptcy court had not abused its discretion. See id.

We appreciate that, notwithstanding the district court's imprimatur, we must independently review the bankruptcy court's determination. See Palmacci v. Umpierrez, 121 F.3d 781, 785 (1st Cir. 1997). But that review should not occur in a vacuum. In this instance, the decision whether to seek revocation of the settlement has been poked, prodded, and probed at some length. For present purposes, the acid test of the bankruptcy court's decision is not whether pressing onward might have produced more funds for the estate but, rather, whether accepting the settlement (and thereby forgoing the risks inherent in intransigence) fell within the universe of reasonable alternatives. The ascertained facts, as revealed by the record, convince us that the bankruptcy court did not exceed the wide boundaries of its discretion in determining that a bird in the hand was worth more than continued shaking of a potentially barren bush.

The Claim Allowance

We turn next to LeBlanc's second assignment of error. The facts are these. The debtor originally retained LeBlanc to handle the environmental suit pursuant to a written retainer agreement, dated June 20, 1988, that specified a one-third contin-

gent fee based on the "verdict, jury award or settlement." LeBlanc succeeded in obtaining a verdict against Lizotte in mid-1990. With an appeal in prospect, he prepared a neoteric fee agreement that provided, in substance, that he would handle the appeal and receive an aggregate fee equal to the greater of 43% of any recovery or his overall time charges (based on specified billing rates). The debtor signed this agreement in November 1990.

When the debtor later filed for bankruptcy and LeBlanc served a proof of claim based on the November 1990 fee agreement, the agreement proved as much necrotic as neoteric; the bankruptcy court struck it down as violative of Rule 3:05(5)(e) of the Rules of the Supreme Judicial Court of Massachusetts (which at the time provided, in pertinent part, that a contingent fee shall not "exceed stated maximum percentages of the amount collected").[4] The court did not disallow LeBlanc's claim entirely, however, but allowed it to the extent of one-third of the amount of the litigation proceeds ultimately collected. The district court affirmed these twin determinations, holding (1) that the bankruptcy court did not err in finding the November 1990 fee agreement unenforceable, and (2) that the bankruptcy court's allowance of the claim in an amount equal to one-third of the actual recovery was "rea-

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[4] In the District of Massachusetts, both the federal district court and the bankruptcy court have incorporated the Supreme Judicial Court's ethical standards into their own rules. See D. Mass. R. 83.6(4)(B); Bankr. Mass. R. 9020-3. At the times relevant hereto, that incorporation embraced former S.J.C. R. 3:05 (since stricken).

sonable and do[es] not constitute an abuse of discretion." Mailman II, slip op. at 4.

Like the district court, we review de novo the bankruptcy court's rulings of law and test its findings of fact for clear error. See BayBank-Middlesex v. Raylar Distributors, Inc., 69 F.3d 1200, 1202 (1st Cir. 1995). We think it is significant here that the claim under review is essentially a claim for an attorney's fee. The bankruptcy court's role is preeminent in determining the reasonableness of fees claimed in bankruptcy proceedings, and the court's determinations in that wise are reviewed with great deference. See In re I Don't Trust, 143 F.3d at 3; In re Martin, 817 F.2d 175, 182 (1st Cir. 1987); Rome v. Braunstein (In re Chestnut Hill Mortgage Corp.), 158 B.R. 547, 549 (D. Mass. 1993), aff'd, 19 F.3d 54 (1st Cir. 1994). With these tenets in mind, we consider the particulars of the appellant's claim.

We most assuredly cannot fault the bankruptcy court for refusing to honor the November 1990 fee agreement. By leaving open the possibility of fees in excess of the stated percentage, that agreement plainly ran afoul of the then-applicable ethical canon, S.J.C. R. 3:05(5)(e). The court therefore had the right -- and, arguably, the duty -- to refuse to enforce it. See Berman v. Linnane, 424 Mass. 867, 871-72 & n.7 (1997).

This brings us to the reasonableness of the allowance. Since the November 1990 fee agreement had purported to supplant, not merely supplement, the original fee agreement, the bankruptcy court determined that it would consider not only the

original agreement, but also equitable doctrines. In the end, it approved LeBlanc's claim to the extent of one-third of the amounts actually realized on the judgment against Lizotte. We glean from the record that the court thought this sum reasonable in relation to the services rendered and to the result achieved and believed that such an award would prevent unjust enrichment of the bankruptcy estate. Indeed, the court expressly found that "one-third of the recovery, plus expenses" constituted a "typical compensation arrangement for matters such as this" and was "[f]air" in the circumstances of this case.

In our view, the allowance of the claim passes the test of reasonableness with flying colors. Because we do not wish to belabor the obvious, we add only a brief comment.

Having found that the November 1990 fee agreement violated ethical precepts, the bankruptcy court likely could have denied LeBlanc compensation altogether. See, e.g., Rome, 19 F.3d at 58; cf. Culebras Enters. Corp. v. Rivera-Rios, 846 F.2d 94, 97 (1st Cir. 1988) (stating, in a non-bankruptcy context, that "[d]enial of attorneys' fees may be a proper sanction for violation of an ethical canon"). The fact that the court elected to take less draconian measures does not mean that it could attach no significance to the violation -- and this is so even though it seems to have regarded the ethical shortfall as resulting from a good-faith blunder. In all events, assessing the reasonableness of claims for counsel fees is a matter "in which the court of first instance enjoys particularly great leeway," In re I

Don't Trust, 143 F.3d at 3, and there is no sign that the bankruptcy court's allowance of LeBlanc's claim in a sum less than he had hoped outstripped that leeway.

The proof of the pudding is in the tasting. The essence of LeBlanc's engagement by the debtor centered around the notion that his compensation would be commensurate to the monies realized by the client. The bankruptcy court's resolution of LeBlanc's claim was faithful to this central concept; it found that LeBlanc's work had produced a recovery and that he was entitled to compensation proportionate to the size of that recovery. So viewed, LeBlanc's complaint reduces to a quarrel over the percentage that the court deemed appropriate. That ends the matter. Whether or not a higher percentage might have been sustainable, it cannot seriously be argued that the court's decision to approve the claim based on a conventional percentage (33%) constituted an abuse of discretion.

We need go no further. At long last, the lower courts appear to have laid this tangled and contentious matter to rest. We discern no error in their administration of these last rites.

Affirmed.

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 99-1865

IN RE MAILMAN STEAM CARPET CLEANING CORP.,
Debtor

GARY R. LEBLANC,
Appellant,

v.

RICHARD P. SALEM, TRUSTEE, ETC.,
Appellee.

BEFORE

SELYA, CIRCUIT JUDGE,
BOWNES, SENIOR CIRCUIT JUDGE
AND BOUDIN, CIRCUIT JUDGE.

ORDER OF COURT

Entered: June 5, 2000

Upon consideration of petition for panel rehearing from judgment of May 16, 2000,

It is ordered that said petition be, and the same hereby is, denied.

By the Court

Phoebe D. Morse, Clerk

By: JANICE M. O'NEIL
Chief Deputy Clerk

[cc: Messrs. LeBlanc and Salem]

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

No. 99-40083-EFH

IN RE: MAILMAN STEAM CARPET CLEANING,
Debtor

MEMORANDUM AND ORDER

June 25, 1999

HARRINGTON, D.J.

This matter is before the Court on appeal from the United States Bankruptcy Court. The Appellant Attorney Gary LeBlanc, here representing himself, represented Mailman Steam Carpet Cleaning, Inc., In a lawsuit against Alfred Lizotte In which Mailman obtained a judgment against Lizotte In excess of $400,000, secured by a real estate attachment of certain commercial property owned by Lizotte. Later, Mailman went into bankruptcy; the sole significant asset in the bankruptcy estate was the judgment against Lizotte.

Based on an appraisal valuing the land securing the judgment at approximately $200,000 and perceived problems In the collectability of the judgment, the Trustee In the bankruptcy proceeding, Appellee Richard Salem, recommended that the claim against Lizotte be settled for $100,000. The Bankruptcy Court allowed the settlement, over Ap-

pellant LeBlanc's objections, but provided that, if the property was sold within two years, the Trustee could move to revoke the settlement. At the hearing on LeBlanc's motion to revoke, the Bankruptcy Court clarified that it would allow a revocation if there was evidence that established that "the settlement agreement had been negotiated by Mr. Lizotte fraudulently; that is, Mr. Lizotte did not disclose...that he had a buyer willing to purchase the real estate...for significantly more than the $100,000 settlement."

When, in six months, a third party paid $560,000 for the property, the business assets of the gas station on the property, and a covenant by Lizotte not to compete, LeBlanc alleged fraud on the part of Lizotte and requested that the Court revoke the settlement. The Bankruptcy Court held a hearing on the motion but, finding insufficient evidence to sustain LeBlanc's allegations, refused, in its discretion, to revoke the settlement and instead allowed the Trustee's motion to \abandon the claim. LeBlanc has appealed that decision and, accordingly, the first issue before this Court is whether the Bankruptcy Court's refusal to revoke the settlement, in light of LeBlanc's allegations of fraud, constituted an abuse of discretion.

The second issue before this Court concerns the Bankruptcy Court's award of attorney's fees to LeBlanc. In the underlying suit against Lizotte, LeBlanc and Mailman had a one-third contingency fee agreement. When LeBlanc later agreed to defend the judgment on appeal, LeBlanc and Mailman executed a subsequent contingency fee agreement,

providing that LeBlanc would be entitled to the greater of 43 percent of the amount ultimately collected or compensation based on his hourly rate. The Bankruptcy Court struck down this subsequent agreement as violative of then-applicable Rule 3:05(5) of the Supreme Judicial Court. The Court allowed LeBlanc, however, a claim for attorney's fees In the amount of one-third the amount ultimately collected, pursuant to the original agreement between the parties, plus some expenses. LeBlanc appealed this decision as well and, accordingly, the second issue before this Court is whether the Bankruptcy Court award of attorney's fees to LeBlanc constituted an abuse of discretion.

After hearing oral argument and reviewing the record before it, including the Bankruptcy Court's decisions with respect to each of these two issue, the Court finds no abuse of discretion by the Bankruptcy Court with respect to either matter.

With respect to the first issue, the record simply does not reflect that the *land* owned by Lizotte and secured by the real estate attachment was valued at more than the $200,000 estimated by the independent real estate appraiser. LeBlanc did not introduce any expert testimony regarding the real estate's valuation either at the original proceeding before the Bankruptcy Court nor later after remand to it from this Court. Moreover, there is no evidence that Lizotte manipulated the valuation of his real estate nor any evidence that he had any potential buyer at the time he entered into his settlement with Mailman's Estate. Accordingly, this Court cannot say that the Bankruptcy Court's refusal to

revoke that settlement constituted an abuse of discretion.

Similarly, with respect to the second issue, the Court holds that the Bankruptcy Court did not err in refusing to enforce the subsequent contingency fee agreement. Moreover, the Court finds that the attorney's fees and expenses awarded by the Bankruptcy Court, amounting to $44,950.61 of the $147,000 ultimately collected for Mailman, are reasonable and do not constitute an abuse of discretion by the Bankruptcy Court.

Accordingly, this appeal is dismissed.

SO ORDERED.

/s/EDWARD F. HARRINGTON
United States District Judge